

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED
DEC 21 2016
Clerk, U.S. District Court
Texas Eastern

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENNETT ROYCE MCNULTY, JR.,

Defendant.

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CRIMINAL ACTION NO. 4:99-CR-074

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Now before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on December 21, 2016, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Glenn Roque-Jackson.

Bennett Royce McNulty, Jr. was sentenced on March 17, 2000, before The Honorable U.S. District Judge Paul Brown of the Eastern District of Texas after pleading guilty to the offense of Felon in Possession of a Firearm, a Class C felony. This offense carried a statutory maximum imprisonment term of 10 years. The guideline imprisonment range, based on a total offense level of 22 and a criminal history category of IV, was 63 to 78 months. Bennett Royce McNulty, Jr. was subsequently sentenced to imprisonment of 70 months followed by a 3-year term of supervised release subject to the standard conditions of release, plus special conditions to include submitting requested financial information, no new credit, testing and treatment for substance abuse, a \$2,000 fine and a \$100 special assessment. On July 6, 2016, Bennett Royce McNulty, Jr. Completed his

period of imprisonment and began service of the supervision term. The case was reassigned to Honorable Marcia A. Crone, U.S. District Judge for the Eastern District of Texas on October 19, 2016. On October 20, 2016, the Defendants' terms of supervised release were modified for mental health treatment per his request.

On December 5, 2016, the U.S. Probation Officer executed a Petition for Warrant or Summons for Offender Under Supervision [Dkt. 34 Sealed]. The Petition asserted that Defendant violated four (4) conditions of supervision, as follows: (1) Defendant shall refrain from any unlawful use of a controlled substance; (2) Defendant shall participate in a program of testing and treatment for drug abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer; (3) The Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; and (4) Defendant was ordered to pay a fine in the amount of \$2,000.

The Petition alleges that Defendant committed the following acts: (1) On October 14, 2016, the defendant submitted a urine specimen at OnScene testing in Sherman, Texas, which tested positive for methamphetamine. This test result was confirmed on November 7, 2016, by Alere Labs. On October 18, 2016, Defendant submitted a urine specimen at the U.S. Probation Office which tested positive for methamphetamine. He signed and admission for admitting to using methamphetamine; (2) Defendant failed to submit, as part of a drug testing program, a urine specimen as instructed at OnScene in Sherman, Texas, on August 29; October 5, 11, 24, and 28; and November 16 and 21, 2016. Additionally, Defendant failed to attend his substance abuse evaluation at Texoma Counseling Associates with Anthony Blackburn, in Denison, Texas, on November 9, 2016; (3) Defendant failed to report as instructed to the U.S. Probation Office on November 18, 2016; and (4) On August 30, 2016, Defendant signed a payment agreement to pay

\$25 a month starting on September 20, 2016. Defendant failed to make a payment for the months of September, October, and November 2016. His balance remains at \$2,000.00.

Prior to the Government putting on its case, Defendant entered a plea of true to all four (4) of the allegations of the Petition. Having considered the Petition and the plea of true to allegations one (1), two (2), three (3) and four (4), the Court finds that Defendant did violate his conditions of supervised release. Defendant waived his right to allocate before the District Judge and his right to object to the report and recommendation of this Court.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant's supervised release be revoked and that he be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twelve (12) months plus one (1) day, with no term of supervised release to follow.

The Court also recommends that Defendant be housed in the Bureau of Prisons Ft. Worth Men's facility, if appropriate.

Dated this the 21st day of December, 2016.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE